IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. 72-388

BETTY L. GERACE and
ALLEN J. GERACE,

Petitioners,

v.

COUNTY OF LOS ANGELES, a legal subdivision of the State of California, CIVIL SERVICE COMMISSION of the County of Los Angeles, The Office of Sheriff of Los Angeles County, PETER J. PITCHESS, Sheriff,

Respondents.

PETITION FOR REHEARING

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

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Respondents.

PETITION FOR REHEARING

The petitioners herein respectfully move this Court for an Order

(1) vacating its denial of the Petition for Writ of Certiorari entered on November 13, 1972, and (2) granting the Petition. As grounds for this motion, petitioners state the following:

THE DECISION OF THE CALIFORNIA SUPREME COURT IN PEOPLE V. BARKSDALE REQUIRES RECONSIDERATION OF THE PETITION FOR WRIT OF CERTIORARI.

On November 22, 1972, the California Supreme Court rendered its decision in People v. Barksdale, 8 Cal.3d 320. The court there prohibited the prosecution of a physician who had performed an abortion in violation of the 1967 California Therapeutic Abortion Act

(California Health & Safety Code, Sections 25950 to 25954). The court held unconstitutionally vague those sections of the Act which authorized only abortions which had received advanced approval of a hospital committee defined in the Act, and based upon a finding either that "[t]here is a substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother" or that "[t]he pregnancy resulted from rape or incest."

Although the Barksdale case arose in the context of a criminal prosecution in which it was stipulated that the abortion had not been performed in an accredited hospital, or any hospital (as required by those

portions of the Act which the California Supreme Court held to be constitutional), the court held that the physician could not be prosecuted. Its reason is of particular importance to petitioners. The court said that under its decision, defendant, a licensed physician, was not required to obtain approval for the abortion from a medical committee of any hospital. However, it was unlikely that any medical committee would have known this prior to the court's decision, and hence, defendant would not have been permitted to perform the abortion, without approval, in a hospital.

Petitioners, BETTY and ALLEN GERACE, were discharged from their employment as deputy sheriffs because

they admitted they had procured the performance of an abortion on petitioner BETTY. Although the proscription against abortions then in effect was declared unconstitutional during the pendency of proceedings against petitioners (People v. Belous, 71 Cal. 2d 954 [1969], the Civil Service Commission held that petitioners had committed a crime and were therefore unfit for continued employment.

It is clear that petitioners did not commit a crime (a determination which the Civil Service Commission was singularly unsuited to make, as it utilized procedures which deprived petitioners of due process of law and would not have been possible in a criminal prosecution), and that under

the rationale of the Barksdale case, they were not chargeable with misconduct for obtaining an abortion in the only manner available to them prior to the declaration by the California Supreme Court that the California anti-abortion statute was unconstitutional.

The decision in the Barksdale case emphasizes the due process failings in the determination of petitioners' case. For that reason and for the reasons contained in the Petition for Writ of Certiorari, petitioners pray that this Court grant rehearing of the Order of Denial, vacate the Order, and grant the Petition and review the judgment and

opinion below.

Respectfully submitted,

SALTZMAN and GOLDIN

By Martha Goldin
MARTHA GOLDIN
Attorneys for Petitioners

CERTIFICATE OF COUNSEL

As counsel for the petitioners, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

Martha Goldin

MARTHA GOLDIN